IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1349 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TAJMAHAMMED MAHERABKHAN MAKRANI - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MM TIRMIZI with Ms.Saheen Qureshi for Applicant.
MR LR POOJARI, APP PROSECUTOR for Respondents

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 02/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition with a prayer that this Court may be pleased to issue an appropriate writ, order or direction, for quashing and setting aside the order of externment dated 14.10.2004

passed by the Sub-Divisional Magistrate, Visnagar - respondent No.2 externing the petitioner from certain areas under provisions of Bombay Police Act for which has been confirmed by the respondent No.3 authority i.e. Additional Secretary, Home Department, State of Gujarat vide order dated 7.5.2005 as being illegal, invalid, null and void, arbitrary, suffers from non application of mind and violative of Articles 14, 19 and 21 of the Constitution of India.

2. When the matter was placed for hearing before this Court on 4.10.2005 this Court has issued Rule and the same was made returnable after three weeks.

3. From the record it appears that thereafter the matter was reached hearing on 13.1.06, 17.1.06, 21.1.06, and on 21.1.06 the learned APP Mr.Poojari asked for time for filing affidavit and also on 27.1.06 the learned APP asked for time and thereafter the matter was kept on 2.2.2006. On behalf of respondents Mr.L.R.Poojari, learned APP appears. He has also filed affidavit-in-reply. So with the consent of parties, the matter is taken up for hearing today.

4. Learned advocate for the petitioner stated that in this case on 9.4.2004 the Sub-Division Magistrate, Visnagar had issued a show-cause-notice to the petitioner under the provisions of Bombay Police Act. On 10.5.2004 the petitioner filed written reply before the externing authority. Thereafter deposition was recorded on both side on 1.6.2004 and on 3.6.2004 also some witnesses were also examined. However, thereafter nothing happens and the impugned order was passed by the Externing Authority on 14.10.2004. In the order which has been passed the authority has not given reasons why there was a delay of four months in this behalf.

5. Being aggrieved and dissatisfied with the said order, the petitioner filed appeal before the appellate authority i.e. Addl.Secretary, Home Department, State of Gujarat and the appellate authority was pleased to dismiss the appeal and confirmed the order of externing authority.

6. Heard Ms.Saheen Qureshi, learned advocate for Mr.M.M.Tirmizi, learned advocate for the petitioner. She has invited my attention to the order passed by

this Court in Special Criminal Application No.1451 of 2005 in the matter of Dilaji Bharthaji Vihol Vs. Deputy Commissioner of Police and others decided by this Court (Coram: K.M.Mehta, J.) on 1.12.2005, and in that matter only on the ground that the authority had passed the order after long lapse of time, when the delay was unexplained and unjustified and so on that ground the petition was allowed by this Court. In view of the same, this petition is required to be allowed.

7. For the foregoing reasons, this Special Criminal Application No.1349 of 2005 is allowed. The impugned order of externment dated 14.10.2004 passed by the Sub-Divisional Magistrate, Visnagar, is ordered to be quashed and set aside. The impugned order dated 7.5.2005 passed by the Additional Secretary, Home Department, State of Gujarat, confirming the order of externment is also ordered to be quashed and set aside. Rule is made absolute. Direct service is permitted.

(K.M. Mehta, J.)

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